U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: EAC 03 107 50020 Office: VERMONT SERVICE CENTER Date: [illegible] 12 2005

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an applied mathematician/image analyst working at Science Applications International Corporation, a contractor at the National Institutes of Health. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now Citizenship and Immigration Services (CIS)] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

> burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In a statement submitted with the initial filing of the petition, the petitioner describes his work and explains why he believes he qualifies for the national interest waiver:

> I am working as a Medical Scientist/Applied Mathematician/Image Analyst for **Science Applications International Corporation** (SAIC) at the **National Cancer Institute Center for Bioinformatics** (NCICB), **National Institute[s] of Health (NIH)**, Bethesda, Maryland, USA. In this position I participate at the **National Cancer Institute (NCI) Director's *Challenge toward a molecular classification of cancer***. . . . SAIC can not file a petition for permanent residency yet. They have to wait according to the law at least one year and one year is a very long time in the **war against cancer**. Approving my self-petition for permanent residency would save in this regard time. . . .
>
> Permanent residency would allow me to **work on multiple projects**. Right now, I can not use my expertise to serve in projects, which are since September 11th a top priority. Expertise Image analysis (for example automatic analysis/searching of finger prints; surveillance videos e.g. from unmanned planes) is desperately needed, but right now I can not accept such projects. . . .
>
> Giving me permanent residency would further allow me to buy a house instead of renting an apartment, to take better care and save money for later when I will be older, and allow me to **continue to work after I am 65 years old**, which would be almost impossible in Germany. . . .
>
> The National Cancer Institute (NCI) Director's Challenge *toward a molecular classification of cancer* clearly has in my opinion the potential to make a significant contribution. . . . For such an endeavor it is necessary to bring people with extensive expertise in a variety of fields such as microarray technology, molecular biology, imaging technology, fluorescence, computer sciences, analysis, statistics, software engineering and medicine together, but it is even better, when somebody [such] as myself can be attracted, who is already familiar and experienced with many of these different areas and combines many of the required abilities in one person.

(The petitioner's emphasis.) The petitioner submits background materials about SAIC and the Director's Challenge and other research and educational activities underway at NIH and its component institutes. These materials establish the intrinsic merit and national scope of the research underway at NIH, but they do not pertain specifically to the petitioner as an individual and, therefore, they cannot establish that it is in the national interest to ensure that the petitioner, rather than a fully qualified U.S. worker, is the one who fills the contract position at SAIC.

We note that, on the I-140 petition form, the petitioner indicated that his position is not a permanent one. Considering that he is already permitted to work for SAIC under the terms of his H-1B nonimmigrant status, it is not clear why permanent immigration benefits are necessary for him to complete his inherently temporary work for SAIC.

The materials that relate specifically to the petitioner establish his employment and his educational credentials. The letter contains copies of old reference letters, but nothing written specifically to support his request for a national interest waiver. In a letter written to support an earlier petition for H-1B nonimmigrant statu[redacted] senior vice president of SAIC, states:

> At the present time, SAIC is in great need of a Medical Scientist to provide support to . . . the National Cancer Institute's Director's Challenge Toward a Molecular Classification of Tumors. . . . The Medical Scientist we seek to employ will be responsible for the performance and oversight of highly technical and scientific microarray experiments. . . . We . . . were delighted to locate [the petitioner], who is ideally and uniquely qualified for this highly professional position and who we urgently need to employ.

Various employers and colleagues describe projects that the petitioner has undertaken. These witnesses describe a competent and well-trained scientist, but being qualified for a highly technical position is not inherently a basis for approving the special benefit of a national interest waiver.

The petitioner submits copies of manuscripts and presentations. It is not clear how much, if any, of the petitioner's work had been published in scholarly journals as of the petition's February 2003 filing date.

The director denied the petition, stating that the record contains no evidence to show that the petitioner's work has been particularly influential within the field. On appeal, the petitioner states: "If a Labor Certification would be required, I would be unable to give my full and unrestricted attention to the needs of the Cancer Centers which we are currently supporting." The petitioner does not explain this claim. The alien beneficiary plays no active role in the labor certification process, apart from completing Form ETA 750B, Statement of Qualifications. The petitioner has already completed that short form as part of the present proceeding.

The petitioner lists several regulatory standards that he claims to have met. Among these are "receipt of lesser nationally or internationally recognized prizes or awards" and "published material about the alien." The standards listed by the petitioner are taken directly from CIS regulations at 8 C.F.R. § 204.5(h)(3). Those regulations concern a different immigrant classification, "alien of extraordinary ability," established by section 203(b)(1)(A) of the Act. That entirely separate classification is unrelated to the national interest waiver discussed at section 203(b)(2)(B) of the Act. The petitioner cannot establish that he qualifies for a national interest waiver by claiming that he also qualifies as an alien of extraordinary ability. If the petitioner desires classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, then the proper course of action would be to file a new petition.

The petitioner submits additional documentation relating to his professional qualifications, his attendance at professional conferences, presentations at seminars, and other activities. The petitioner also submits a copy of a published article that was accepted for publication in April 2003, several months after the petition had been filed. All in all, the evidence shows that the petitioner has been an active member of the NIH research community and a valued employee at SAIC, but the record does not indicate that the petitioner's work has had any visible impact outside of SAIC and NIH, or that the petitioner is responsible for more progress in the fight against cancer than would have been possible with a different qualified worker in the same position.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.